

Minutes of the Special and Regular Meeting of October 24, 2006

One Twin Pines Lane, Belmont, California

SPECIAL MEETINGS

CLOSED SESSION - 6:05 P.M.

- A. Conference with Labor Negotiator, Terry Belanger, pursuant to Government Code Section No. 54957.6: BPOA
- B. Conference with Legal Counsel Pursuant to Government Code Section 54956.9(b) Significant Exposure to Litigation: Two Cases
- C. Conference with Real Property Negotiator, Public Works Director Davis, Pursuant to Government Code Section 54956.8, for Property Located at 700 Island Parkway (APN# 040 360 400)

Attended by Councilmembers Feierbach, Warden, Dickenson, Lieberman (arr. 6:10 P.M.), Mathewson, Interim City Manager Belanger, City Attorney Zafferano, Interim Human Resources Director Sam (Item A) Fran Buchanan (Negotiator, Item A), Police Chief Mattei (Item A), Police Captain Wood (Item A), Public Works Director Davis (Item B). City Clerk Cook was excused from attending. Items B(1) and Item C were continued to the end of the meeting.

ADJOURNMENT at this time, being 7:20 P.M.

Terri Cook
City Clerk

This meeting not tape recorded or videotaped.

REGULAR MEETING

CALL TO ORDER 7:35 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Lieberman, Feierbach, Dickenson, Warden, Mathewson

COUNCILMEMBERS ABSENT: None

Staff Present: Interim City Manager Belanger, City Attorney Zafferano, Community Development Director de Melo, Police Chief Mattei, Public Works Director Davis, Finance Director Fil, City Clerk Cook.

PLEDGE OF ALLEGIANCE

Led by City Clerk Cook.

REPORT FROM CLOSED SESSION

Mayor Mathewson stated that direction was given but no action taken on two of the three Closed Session items, and that the third item (Conference with Legal Counsel Pursuant to Government Code Section 54956.9(b) Significant Exposure to Litigation: Two Cases) would be continued after adjournment of the Regular Meeting.

PUBLIC COMMENTS AND ANNOUNCEMENTS

Glenn Maguet, on behalf of the Belmont Senior Club, thanked the Council for assisting with securing additional temporary handicapped parking places in Twin Pines Park, which has helped address parking issues. He requested consideration of complimentary use of the Senior Center for an upcoming event being hosted by the Center for Independence for the Disabled. He noted the group does not have funds to pay the rental fee.

Mayor Mathewson referred this matter to staff for followup.

Judy King, stated that the demolition of the old police station had taken place without incident. She noted that there is an approved plan in place for the space this building occupied, so there would be no need to put together a new plan.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Dickenson stated that he has received correspondence from a Belmont resident who is serving in the military in Iraq. The resident would like to collect school supplies and soccer balls to take

with him when he returns for his next tour of duty. Councilmember Dickenson asked that interested people contact him for further information.

AGENDA AMENDMENTS

Councilmember Feierbach requested the removal of Item 4-A (Minutes of the Special and Regular Meeting of September 12, 2006 and Special Meeting of September 20, 2006). She noted that she and Councilmember Warden were recused from the Slope Density Ordinance, which was addressed at those meetings.

City Attorney Zafferano stated that approval of these minutes could reflect the recusal of the two Councilmembers without the need to remove them from the Consent Agenda for separate consideration. City Clerk Cook stated she would note this for the record.

Councilmember Feierbach requested the removal of Item 4-F (Resolution Establishing a Portion of Flashner Lane Immediately North of Ralston Avenue to One-Way North Bound) for separate consideration.

CONSENT CALENDAR

Approval of Minutes of the Special and Regular Meeting of September 12, 2006, the Special Meeting of September 19, 2005 (Closed Session), the Special Meeting of September 20, 2006, and the Special and Regular Meeting of September 26, 2006. (Minutes of September 12 and September 20, 2006, approved 3-0-2, Feierbach/Warden recused).

Approval of Resolution 9818 Authorizing the City Manager to Execute a Contract for Police Computer Aided Dispatch & Records Management System with Sun Ridge Systems Inc. for an amount not to exceed \$256,262.00

Approval of Resolution 9819 Approving the Filing of the Bicycle Transportation Account (BTA) Grant Application in the Amount of \$1,250,000 for the U.S. Highway 101 Bicycle/Pedestrian Bridge Project, City Contract Number 433

Approval of Resolution 9820 Approving a Permanent Encroachment Agreement for Replacement of a Retaining Wall within the Public Right-of-Way at 130 Virginia Avenue

Approval of Resolution 9821 Approving Contract Change Order No. 1 with Hillside Drilling Company, Inc. for Structural Lining of an Existing Six Foot Culvert and Install New Guard Rail for the East Laurel Creek Bank Stabilization Project for an Amount not to Exceed \$124,200, City Contract Number 475

ACTION: On a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, the Consent Agenda was unanimously approved, as amended, by a show of hands (Councilmembers Feierbach and Warden recused on Minutes of September 12 and 20, 2006).

ITEM REMOVED FROM CONSENT CALENDAR FOR SEPARATE CONSIDERATION

Resolution Establishing a Portion of Flashner Lane Immediately North of Ralston Avenue to One-Way North Bound

Councilmember Feierbach noted that property owners had been notified of this matter, but she inquired regarding outreach to adjacent businesses.

Public Works Director Davis stated that his department would be working with the Police Department to develop a flyer to send to the businesses.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Feierbach, Resolution 9822 Establishing a Portion of Flashner Lane Immediately North of Ralston Avenue to One-Way North Bound was unanimously approved by a show of hands.

OLD BUSINESS

Resolution Approving Donation Policy for Acceptance of Community Donations to the Parks and Recreation Department (held over from 10/10/06).

Parks and Recreation Director Politzer reviewed the history of the Parks and Recreation Commissions discussions regarding this issue. He noted that the Council was only being asked to adopt the policy at this time, and a catalog of items, as well as procedures, would be developed subsequently.

Judy King, Parks and Recreation Commissioner, stated that this was a detailed policy. What needs to be done now is to develop a wish list for donations. She noted that the original intent was to eliminate rules, not add to them, but she commented that this policy would help with difficult situations.

Councilmember Feierbach expressed thanks to the Parks and Recreation Commission, former Interim Parks and Recreation Director Bridges, and current Parks and Recreation Director Politzer for their efforts on this matter. She expressed a desire to include donation of land in the upcoming catalog.

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Lieberman, Resolution 9823 Approving Donation Policy for Acceptance of Community Donations to the Parks and Recreation Department was unanimously approved by a show of hands.

Consideration of a Lighted Holiday Tree in Twin Pines Park (held over from 10/10/06)

Parks and Recreation Director Politzer stated that a tree company and a lighting company provided quotes for lighting various trees within Twin Pines Park, including the large redwood tree. He noted that the Parks and Recreation Commission reviewed this matter, and supported the concept. Of the options presented, they supported lighting the large redwood tree, but expressed concern regarding the cost, and recommended lighting the smaller trees and bushes due to the lower cost. They also recommended that a professional company be utilized to do it right. He noted that lights would be left on the tree year round. He clarified that staff had only received the quotes on the day of the Commission meeting, so the Commission did not have much time to review the documentation.

Parks and Recreation Director Politzer reviewed the scope of services and cost estimates provided by each company.

In response to Council questions, Parks and Recreation Director Politzer stated that if there was a desire to light only the smaller redwood trees, the cost would be approximately \$200, and it could be accomplished by City staff. He noted that the primary differences in cost between the tree company and the lighting company is the expense for the lift, the quality of the lights, and weather-related maintenance.

Judy King, Parks and Recreation Commissioner, expressed concern that the Mayor's vision would dwindle if only bushes and small trees were decorated, which few people would see. She stated that her preference, and that of the Commission's, is to light the large redwood if cost were no object. She noted that the City could not afford holiday decorations on the light poles last year. She voted for the smaller trees, but has since reconsidered her vote, since those would not be seen by many. She noted that the Commission also discussed the potential to decorate the Twin Pines Park fence with lights, but security was a concern, so this was eliminated as an option.

Councilmember Feierbach stated she supported the idea of lighting the large tree, but \$15,000 was too much to spend, and it is wrong to spend taxpayer's money on this. She would prefer to spend it on a newsletter. She noted that previous budget cuts have not been restored. She recommended using volunteers to light the smaller trees. She could support lighting the large tree if the money was contributed by others.

Councilmember Warden supported the idea of lighting the big tree, since it would be festive. There was positive feedback from the community regarding the red ribbons installed on light poles last year. He supports giving Davey Tree Company a try, since they are a reputable company that has done work for the City in the past, and their cost is considerably less than the lighting company. Taxpayers' money will be used for this, so they should be able to see the tree that is lit.

Councilmember Dickenson supports the idea of lighting the big tree. It completes and enhances the Civic Center, and would be money well spent. He recommended that Council direct staff to negotiate the price.

Councilmember Lieberman also supports lighting the large tree, and using professionals. Smaller trees are not visible. He expressed concerns regarding the large difference in cost between the two companies. The initial cost is high, but the ongoing maintenance fee is bearable. People will come to see this tree, which could help local businesses. Businesses could be asked to support this. It could re-energize downtown.

Mayor Mathewson said that the large tree would be the best option. There are still items to be completed in the Twin Pines Park complex, and he recommended waiting to do this project next year, and ask for monetary support in the meantime. This could be added to the donation catalog.

Council concurred to put this matter over to next year.

NEW BUSINESS

Discussion and Direction Regarding Amendments to Belmont Municipal Code Section 20.5, Regulation of Smoking

City Attorney Zafferano reviewed an ordinance recently adopted by the City of Dublin which declared second-hand smoke a public nuisance. He reviewed the provisions of Belmont's current smoking ordinance, which is similar to those in other cities. He outlined the newer State laws prohibiting smoking in certain public areas. The City of Calabasas has the most restrictive smoking ordinance in the State. He has not reviewed any litigation in any restrictive cities, as there has not been enough time to gather the data since this was last discussed. He reviewed the policy questions to be determined, and the Council would need to determine if public monies would be used to enforce an ordinance.

In response to Council questions, City Attorney Zafferano noted that Belmont's current ordinance prohibits smoking within 25 feet of a playground, but is not prohibited in other areas of a park. It also prohibits smoking in public areas of apartment buildings, but not in individual apartments. He noted that some individual leases may otherwise restrict smoking. He clarified that the recourse for apartment building smoking violations would be to a claim against the landlord or tenant.

City Attorney Zafferano stated that if smoking is considered a private nuisance, evidence would need to be provided that a person has been harmed. If it is declared a public nuisance, no evidence is needed, since the mere presence of smoke is sufficient to determine harm.

Becky Husman, on behalf of several residents at Bonne Brae Terrace, stated that the residents she is representing are in favor of any ordinance that would eliminate second-hand smoke. Bonne Brae Terrace was declared a no-smoking facility in 2003, following a fire, but existing smokers were grandfathered in. New smokers must sign an agreement to smoke only in designated areas. Some residents are affected by the smoke and some are not. The ordinance would provide additional protection, and she shared names of residents who have conditions affected by second-hand smoke. There have been violations of the smoking policy. An ordinance would get the attention of the management, who may reconsider the existing rules. Nonsmokers are moved if they complain. People are afraid to complain because they don't want to move.

Sara Lambert, Lesley Foundation (Bonnie Brae Terrace), stated that management has focused on the smoking issue since the fire in 2003, which was caused by a smoker. She stated that new residents may not smoke in their units. There are currently 10 grandfathered-in smokers. She described the facility, and where smoking is allowed and where it is not. Three tenants have been successfully evicted for violating the smoking policy. One resident moved three times because of noise complaints, not because of smoking. She recommended delaying the enactment of any ordinance to give time to assess the effect of Dublin's new ordinance. It would be a burden to enforce an ordinance. She noted that Bonnie Brae has installed air filters to help deal with the smoking issue.

In response to Councilmember Feierbach, Ms Lambert clarified that the Housing and Urban Development Department (HUD), from which funding is received, advised of the need to grandfather in existing smokers. She noted that existing smokers cannot afford to move, as many are very low income.

Bob Ellsworth, representing his mother who is a resident of Bonnie Brae, expressed his support for an ordinance declaring second-hand smoke a nuisance. People should be considerate of their neighbors, but if they were, no laws would be needed. Not everyone is considerate, and many are offended by second-hand smoke. People should be able to draw on legal options.

Connie Chaltas, Redwood City resident, described an issue with a neighbor who chain smokes, which has forced her to sleep in her car for the past two years. Her condominium association has advised her it is difficult to fight this situation legally. There are more multi-unit buildings being constructed, which smoking will affect. She stated Belmont could be a leader in this issue. She has spoken to a Redwood City Councilmember regarding this matter.

George Hubbard, Belmont resident, described issues with chain smokers in his building. He has attempted to address the issue with the residents, but his requests have been disregarded. His manager advised him to move, which is inconvenient and costly. He is unable to open his windows and cannot have fresh air. Second-hand smoke is a violation. He supports an ordinance.

Ronald Korwald, Belmont resident, described his medical condition which is affected by second-hand smoke. The California Air Resource Board has declared second-hand smoke a contaminant, and a Surgeon General's report states there is no safe level of exposure. He is affected by neighbors smoking on their deck, which is offensive. He supports an ordinance.

Serena Chen, American Lung Association of California, stated that in years past, the Lung Association received two calls per month regarding second-hand smoke, and it now receives two calls per day. The Contra Costa Board of Supervisors enacted a comprehensive ordinance, which also addresses private multi-unit buildings. She worked with Dublin and Emeryville in the adoption of their recent ordinances. The City of Calabasas has had no issues since passage of their ordinance. She noted that the State is relying on individual cities to address this issue.

David Darden, Bonnie Brae resident, stated he was offered a chance to move because of smoking. He was given only three days to accomplish the move, which he was unable to do. He has a breathing machine that he is unable to use because of the presence of second-hand smoke.

Councilmember Feierbach supports using Dublin's ordinance as a model, but would like to consider some of the provisions in the Calabasas ordinance to address multi-unit dwellings. She expressed concern for fairness regarding apartment buildings, and recommended working with the Tri-County Apartment Association. There should be a way to discourage smoking.

Councilmember Dickenson expressed his support for the Dublin model, in that no City resources are used for enforcement. This is a private matter. Smokers have rights, but he noted that those rights are sometimes disruptive to nonsmokers.

Councilmember Lieberman expressed concern that the Dublin model had no provisions for enforcement. The City should enforce laws it enacts. He supports tightening the current ordinance. It is difficult to enact an ordinance governing private homes, but efforts should be made to minimize the effect of second-hand smoke. He is reluctant to support a declaration of second-hand smoke as a public nuisance.

Councilmember Warden concurred with Councilmember Lieberman that the City should enforce its ordinances. What people do in private homes is permissible if it does not affect neighbors. He cited the numerous private places where smoking is not permitted, including airplanes, restaurants, bars, and elevators. He agrees with the speakers that second-hand smoke is a violation. He supports the Calabasas model.

In response to Mayor Mathewson, Police Chief Mattei stated that enforcement could be accomplished through the administrative citation process using Code Enforcement and the Police Department. City Attorney Zafferano added that the citation process authorizes staff to cite for civil violations.

Discussion ensued regarding the procedures for the administrative citation process.

Councilmember Feierbach expressed support for using the citation process to avoid people having to go to small claims, which is difficult for those on fixed incomes. She expressed concern regarding the use of police resources to issue citations.

Mayor Mathewson expressed concern regarding impact enforcement will have on staff.

ACTION: Councilmember Warden made a motion, seconded by Councilmember Feierbach, to direct staff to draft an ordinance using the City of Calabasas as a model, unless staff discovers issues with that ordinance since its adoption.

Councilmember Dickenson expressed concerns regarding staff resources for enforcement.

Councilmember Warden suggested giving staff latitude for drafting a similar ordinance for Belmont.

ACTION: On the original motion, to include placing this item on the November 14, 2006 agenda, motion unanimously approved by a show of hands.

ADJOURNMENT at this time, being 9:15 p.m., this meeting was Adjourned to Closed Session, in memory of James McLaughlin, former City Clerk.

Terri Cook

Belmont City Clerk

Meeting Tape Recorded and Videotaped
Audio Recording 647

CONTINUED CLOSED SESSION

- B. Conference with Legal Counsel Pursuant to Government Code Section 54956.9(b)
Significant Exposure to Litigation: Two Cases

Attended by Councilmembers Feierbach, Warden, Dickenson, Lieberman, Mathewson, Interim City Manager Belanger, City Attorney Zafferano, Public Works Director Davis.

ADJOURNMENT at this time, being 10:20 p.m., this Closed Session was Adjourned.

Terri Cook

Belmont City Clerk

Closed Session Not Tape Recorded or Videotaped